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8 SUNNYSIDE DEVELOPMENT CORPORATION,
9 LLC.,

Case No. 05-01447 MHP

10 Plaintiff(s),

11 vs.

12 OPSYS U.S. CORPORATION, et al.,

13 Defendant(s).

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**ORDER RE
DEFAULT
JUDGMENT**

Default was entered as to the remaining defendant in this case, Opsys U.S. Corporation, and plaintiff has filed a motion for default judgment. Defendant Opsys filed in bankruptcy and the bankruptcy court granted plaintiff relief from the stay, limited to the amount of Opsys' insurance policy of one million dollars. Plaintiff now moves for judgment in an amount that reaches the limits of the policy.

In support of its motion plaintiff files merely a declaration of "an employee and manager" of the company and a summary of the rent, maintenance and taxes due on the occupancy as well as an enumeration of the contractor expenses in connection with removal from and remediation of the facility because of the presence of hazardous waste attributed to defendant. The total losses claimed by plaintiff are over \$1,300,000.00. There is no documentation to support these claims - - no lease, no invoices, or any other proof of the amount of damages.

The damage claims here are not liquidated ones. And while pursuant to Federal Rule of Civil Procedure 55(b)(2) the court may not be required to hold an evidentiary hearing, nonetheless,

1 some reliable evidence of damages in the amount claimed must be presented. See Transatlantic
2 Marine Claims Agency, Inc. v. Ace Shipping Corp., 109 F.3d 105, 111 (2nd Cir. 1997)(citing to other
3 cases where the court “relied upon detailed affidavits and documentary evidence supplemented by
4 the District Judge’s personal knowledge of the record gained during four years involvement with the
5 litigation” and where the district judge was “inundated with affidavits, evidence , and oral
6 presentations”). In order to make a claim on the million dollar policy, plaintiff must do more than it
7 has done in this case to satisfy the court and Rule 55(b)(2) that there is a reasonable basis for the
8 damages claimed.

9 Therefore, within thirty (30) days of the date of this order plaintiff shall submit documentary
10 evidence of admissible quality to support the damages he asserts. The court will determine whether
11 the submissions are sufficient or whether the matter should be referred to a magistrate judge for a
12 hearing.

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14 Date: February 27, 2008



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16 MARILYN HALL PATEL
17 Judge
18 United States District Court
19 Northern District of California
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ENDNOTES

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